

> Client Alert

Federal COVID-19 Vaccine Mandate for Private Sector Employers Struck Down By Supreme Court

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If you require any additional information regarding workplace laws concerning the COVID-19 pandemic or other employment law questions please feel free to contact any of the attorneys listed below.

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On January 13, 2022, the Supreme Court of the United States blocked enforcement of the federal COVID-19 mandate issued by the Biden Administration, which required large private-sector employers employing more than 100 employees, to enforce mandatory COVID-19 vaccination or weekly testing in the workplace. The mandate, known as the Emergency Temporary Standard (“ETS”) was to be enforced by the Occupational Safety and Health Administration (“OSHA”) and scheduled to go into effect on Monday, January 16, 2022.

The ETS would have required workers either to be vaccinated against COVID-19 or, alternatively, wear masks in the workplace and submit to weekly testing at their own expense. Exceptions would have been available to certain workers, including those who do not work in close contact with other employees or members of the public, such as remote workers and individuals who work exclusively outdoors.

The Court’s decision to block this vaccination-or-test mandate will impact more than 84 million workers across a broad spectrum of industries and employment settings, but does not apply to health care workers employed in facilities that receive federal funding and payments through Medicare or Medicaid. Thus, effective January 16, 2022, some 17 million covered health care workers will still be required to be fully vaccinated in order to work.

Next Steps for Large Private-Sector Employers

While the ETS will no longer go into effect for large private sector employers, such employers must keep in mind that the Supreme Court’s ruling does not eviscerate any COVID-19 vaccination mandates issued by state or local governments, including New York City’s mandatory vaccine requirement. Employers not covered by any such alternate mandates are, of course, free to implement their own COVID-19 vaccination-or-test policies, so long as such policies provide appropriate alternatives for workers who might have a legal basis for exemption.

To the extent that affected private sector employers have already collected or recorded proof of employee vaccination in anticipation of the effective date of the ETS, and do not wish to maintain a mandatory vaccination-or-test policy, such employers may return those documents to employees or securely discard them,

as well as any employee records concerning prospective exemptions to the ETS mandate. Affected employers should also review any policies issued or revised in anticipation of the ETS rollout, including those encompassed in employee handbooks, and revise such policies as appropriate.

The Morrison Cohen LLP Labor & Employment Team is available to provide legal advice concerning the new Supreme Court decision as well as all other workplace laws concerning the COVID-19 pandemic or other employment law questions that may arise from time to time.